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**From:** Pieper, Carol (DPU)  
**Sent:** Tuesday, September 05, 2006 3:20 PM  
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**Subject:** DTE 06-56, ruling on non-disclosure agreement

On Friday, September 1, 2006, at the request of the parties, I issued an oral Arbitrator Ruling related to a non-disclosure agreement being executed by Charter and Verizon. The language from the non-disclosure agreement was taken from a Protective Order issued by the Department in [Mass Market Switching, D.T.E. 03-60 \(10/1/03\)](#). Charter sought to include two additional sentences (highlighted in yellow below) to the drafted language. I determined that the proposed additional language was not consistent with the intent of the paragraph and thus ruled that the two sentences should not be included. I also asked the parties to revise the language relating to the timeframe for filing motions seeking "highly classified" protection. Verizon stated that any motion it needed to make regarding such protection would be submitted by Wednesday, September 6, 2006.

I stated that the parties should execute the non-disclosure agreement by Tuesday, September 5, 2006.

Please contact me if you have any questions on this matter.

Carol M. Pieper  
Hearing Officer  
Department of Telecommunications & Energy  
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5. Highly Sensitive Confidential Information. Nothing contained herein shall be construed as requiring a party to produce all documents which it designates as Confidential Information, should the providing party allege, and the Department determine, that any Confidential Information to be provided pursuant to this Agreement is of such a highly sensitive nature that access to and copying of such Confidential Information as herein set forth would expose the providing party or any of its affiliates to an unreasonable risk of harm. For the avoidance of any doubt, both parties agree and understand that this provision shall not be used by either party as a basis to allege that certain information is too highly sensitive to be accessed or copied, under any circumstance, by the other party. Instead, the parties agree and understand that the intent of this provision is to allow for additional confidentiality protections for certain material, not to preclude the production of such material entirely. Where the providing party so contends, on or before the date such highly sensitive information would otherwise be produced, the providing party shall object to the production of such information and shall file with the Department and serve on the other party a motion requesting that the items of Confidential Information in question be declared to be highly sensitive Confidential Information. The motion must conform to the requirements and standard set forth in G.L. c. 25, § 5D and shall include the special protection and treatment desired, the grounds why the Confidential Information in question needs special protection and a description of the items of Confidential Information alleged to be highly sensitive and confidential. The motion must also include an affidavit from a party's representative affirming that access to the Confidential Information under the other terms of this Agreement would be likely to harm the providing party and specifying the type of harm that would be suffered. The non-moving party will have two (2) business days to respond in writing to the motion, which response must include a description of the need for access to such Confidential Information and why such a need cannot be satisfied with other information, whether

Confidential Information or otherwise. The moving party shall specifically request that the Department determine the status of the Confidential Information in question and the treatment that should be afforded to it as expeditiously as possible.